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FACEBOOK, INC.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MAXIMILIAN KLEIN, et al.,

Plaintiffs.

v.

FACEBOOK, INC., a Delaware corporation,
Defendant

Defendant

Case No. 5:20-cv-08570-LHK

**DEFENDANT FACEBOOK, INC.'S
REPLY IN SUPPORT OF
ADMINISTRATIVE MOTION FOR
CLARIFICATION OF ORDERS
CONSOLIDATING *LOVELAND* AND
ROSENMAN WITH *KLEIN***

Judge: Hon. Lucy H. Koh

1 The Court has already consolidated the *Rosenman* and *Loveland* user cases with the
 2 remaining user cases. That means that the *Rosenman* and *Loveland* user plaintiffs are either in *this*
 3 *case* or they should dismiss their claims and get out of it. They cannot be, as they now collectively
 4 urge,¹ in limbo—sitting on the sidelines and awaiting the resolution of the rest of the users’ putative
 5 class claims (or some undefined set of interim issues) while avoiding the discovery obligations
 6 and estoppel effects that attach to the other named user plaintiffs. Because of this obvious
 7 inefficiency, the collective user plaintiffs (including those named on the face of the consolidated
 8 user complaint and the *Rosenman* and *Loveland* user plaintiffs) have completely failed to explain
 9 how their proposal would “reduce case and discovery duplication, expedite pretrial proceedings,
 10 prevent class member confusion, and minimize the expenditure of time and money for all parties,”
 11 as consolidation is meant to do. *Ramirez v. HB USA Holdings, Inc.*, 2021 WL 840353, at *2 (C.D.
 12 Cal. Jan. 15, 2021).

13 Indeed, the response submitted by the *Loveland* plaintiffs (Dkt. No. 194) highlights exactly
 14 why plaintiffs’ proposed path forward would be inefficient and would result in duplicative and
 15 vexatious litigation. Rather than implementing a system that would promote efficiency and
 16 provide clarity through resolution of a consolidated set of user claims, the *Loveland* plaintiffs *want*
 17 to allow their claims, which include COVID “vaccine hesitant” subclasses of the user class, to
 18 hang in the ether and then “revisit” this issue not too far in the future: “after the Court has ruled
 19 on Facebook’s Motion to Dismiss the Consolidated Consumer Class Action Complaint.” *Id.* at 2.
 20 This would be in direct contradiction of this Court’s ordered structure and the purposes of
 21 consolidation.

22 Rosenman’s position is even more of a stretch: according to Rosenman, her claims should
 23 be allowed to exist in abeyance for months and potentially years but could be picked up and
 24 litigated at her whim at any point in the future. *See* Mot. at 5. This position would lead to an
 25

26 ¹ Despite multiple exchanges over the preceding weeks, the User class and the *Rosenman*
 27 and *Loveland* user plaintiffs never once suggested that they viewed a stay of the *Rosenman* and
 28 *Loveland* user plaintiffs’ claims as appropriate.

1 unmanageable morass of overlapping class actions (all at different stages of litigation) that directly
 2 contradicts the Court's ordered structure.

3 That makes no sense. Especially because the responses from all of the user plaintiffs—
 4 including the *Rosenman* and *Loveland* plaintiffs—confirm that nothing materially differentiates
 5 the *Rosenman* and *Loveland* cases from the other cases consolidated in *Klein* or from the claims
 6 of the other user plaintiffs who are named in the consolidated user complaint. The only real
 7 difference is that the *Rosenman* and *Loveland* claims came before the Court after the Court
 8 appointed Interim Class Counsel for the User class and Users filed a consolidated complaint—and
 9 that only happened because the *Rosenman* and *Loveland* plaintiffs (or perhaps their counsel)
 10 sought to evade the proper forum for their claims against Facebook and the case management and
 11 class counsel structure that the Court ordered to manage these cases. *See* Mot. at 4. Those
 12 gambits—filing in Pennsylvania despite a clear forum selection clause (*Loveland*) and repeatedly
 13 trying to disguise federal antitrust claims as state law claims (*Rosenman*)—should not be rewarded
 14 by effectively allowing those user plaintiffs multiple bites at the apple against Facebook in the
 15 event that the consolidated user case does not go their way.

16 For these reasons, and the reasons stated in Facebook's Motion, the Court should grant
 17 Facebook's Motion and confirm that if plaintiffs wish to proceed with their antitrust claims against
 18 Facebook, they must do so as part of the Users' consolidated complaint and through the interim
 19 class counsel structure the Court has created, or they may dismiss their claims and assume the
 20 status of absent class members.

21
 22 Dated: November 18, 2021

Respectfully submitted,

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 24 By: /s/ David Z. Gringer
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November 2021, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System.

/s/ David Z. Gringer
David Z. Gringer